COM/1-84-034-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Insurance Agent's License of Ross Henry Dworsky and In the matter of Dworksy Agency, Inc.

FINDlINGS OF FACT CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Jon L. Lunde, commencing at 9:00 a.m. on Tuesday, November 27, 1984, at the Office of Administrative Hearings, in Minneapolis. The hearing continued on November 28, 29, and 30, 1984; December 3, 4, and 5, 1984; and on January 3 and 4 1985. The hearing was held pursuant to a Notice of and order for Hearing and Statement of Charges filed on April 4, 1984, as amended on May 8, 1984, and a Second Amended Statement of Charges dated October 17, 1984.

Frank R. Berman, Attorney at Law, 1336 TCF Tower, Minneapolis, Minnesota 55402, appeared on behalf of the Respondents, Ross Henry Dworsky and the Dworksy Agency, Inc. John C. Bjork, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce (Department). Tne record closed on March 15, 1985, when the last authorized brief was filed.

Notice is hereby given that pursuant to Minn. Stat. sec. 14.61 the final decision of the Commissioner of the Minnesota Department of Commerce shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Michael Hatch, Commissioner of Commerce, 500 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101.

STATEMENT OF ISSUES

The issues in this case are generally as follows:

(a) Whether the Respondents have engaged in fraudulent,

coercive or dishonest insurance practices by misrepresenting material facts, forging signatures and knowingly making false statements on applications for assigned risk insurance; by charging unreasonable fees, in addition to commissions, for the placement of assigned risk insurance; and by failing to make proper disclosure of the nature and purpose of the fees and commissions received;

untrustworthy or financially irresponsible by failing to advise an insured of the cancellation of his assigned risk policy;

(c) Whether the Respondent, Ross Dworsky, has made false statements on an application for a perpetual insurance agent's license;

(d) Whether the Respondent, Dworsky Agency, Inc, has acted as an insurance agent without proper licensure; and

(e) Whether the Respondents have engaged in unfair or deceptive trade practices.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ross Henry Dworsky is a life-long resident of Minneapolis. Since 1958, he has been a self-employed insurance agent, duly licensed by the State of Minnesota. The Dworsky Agency, Inc., is a Minnesota corporation owned soley by Dworsky. Since 1980, or before, Dworsky's insurance business was operated through the corporation, although the corporation was never licensed to engage in the insurance business in the State of Minnesota. Tne corporation engaged in the insurance business until May 8, l984, when Dworsky received the First Amended Statement of Charges in this case charging the corporation with illegally engaging in the insurance business without being licensed. As soon as Dworsky learned of that charge, he ceased doing business through the corporation.

2. Dworsky is an independent insurance agent, whose business offices are currently located in Hopkins. He has been a general agent for the How; Insurance Company of New York, Aetna Life and Casualty and the Crum 2nd Forster Group for many years. He writes all lines of insurance, including general casualty insurance, and has several hundred clients.

3. The Minnesota Automobile Insurance Plan (MAIP) is a statutory plan whereby automobile insurance is made available to any person who is unable to obtain insurance coverage in the voluntary insurance market at a premium lower than that which is available under the plan. MAIP was originally established by the insurance industry in 1942 for that purpose. Most, if not all, other states have similar plans. All such plans are associated with the Automobile Insurance Plans Services Office (AIPSO) located in New York.

4. MAIP is managed by John R. Bechtel, Jr., who is a branch manager for Minnesota aid the Dakotas. However, a Governing Committee consisting of eight

insurance company representatives chosen by Minnesota automobile insurers governs MAIP's operations. The 'rules' governing the issuance of insurance by MAIP are usually submitted to the Governing Committee by the home office in New York. If they are approved by the Governing Committee, they are submitted to the commissioner of Commerce (Commissioner). If the Commissioner approves them, they become part of the official MAIP plan (plan).

The MAIP plan is divided into two distinct sections: administrative provisions (blue pages) and provisions relating to rating, classifications, eligibility, premiums, and endorsements (white pages). The great bulk of the plan is contained in the white pages. MAIP does not enforce or administer the material in the white pages and does not resolve or arbitrate disputes which arise between insurers and MAIP applicants unless an administrative provision of the blue pages is in issue. Once an application is assigned to an insurer, MAIP's role usually ends.

5. All insurers who write automobile insurance in the State of Minnesota are required to participate in the plan and any licensed insurance agent can submit applications for coverage under the plan. Tne applications are submitted to MAIP, which randomly assigns them to a Minnesota automobile insurer based on a checklist developed by the home office. The applications are assigned to Minnesota automobile insurers in the proportion to which they write automobile insurance in Minnesota in the voluntary market.

on the two-page MAIP application, the applicant must provide his name, address, and occupational information; a description of the insured vehicle and its uses; coverages requested; information about all operators of the vehicle; and information concerning prior insurance, accidents and convictions. The producing agent must certify the application. The producer's certified statement reads in part as follows:

> I do hereby certify that I am a licensed agent of the State of Minnesota. I have read the Minnesota Automobile Insurance Plan, have explained the provisions to the
> IF applicant, and have included in this application all required information given to me by the applicant

6. Late in the 1970s, Dworsky began studying the MAIP plan. Based on his study, he concluded that young drivers, and those drivers with poor driving records, could realize substantial savings in their automobile insurance premiums (up to $2,500) if they qualified for a commercial automobile policy under the plan. In addition, after preliminary market sampling, he concluded that there was a definite market for commercial insurance under the plan for such persons.

7. Dworsky sought to develop this market by identifying young drivers of

pickup trucks and vans in the Twin-City metropolitan area, and spent several thousand dollars abstracting the information he needed from state motor vehicle records. Early in 1980, he began mailing solicitations to the 23,000 prospects he had identified. He received approximately 2,900 replies. His staff screened those replies by telephone to identify those persons who used their pickups and vans for business or commercial purposes. Approximately 40% of the prospects were eliminated by this initial screening process.

8. Dworsky then get with the other, interested individuals to determine if they might qualify for commercial insurance under the plan. Initially he tried group meetings, but that did not work out, and he met with most of them individually. Prior to 1983, if the individual indicated that he customarily used his truck or van for any business purpose, Dworsky would submit a MAIP application for commercial insurance.

9 . in the voluntary market, young persons, or those persons with bad driving records, frequently pay annual automobile insurance premiums in excess of $2,000, if they are able to obtain insurance at all. If those individuals customarily use their pickup or van for any business purposes, they are required to obtain a commercial automobile policy in the voluntary market. Historically, in the voluntary market, the test for determining whether an individual should be rated as a commercial risk, rather than a personal risk, is whether the vehicle to be insured is customarily used for business or commercial purposes. This test has been adopted by the Insurance Service organization (ISO), and is commonly used in the insurance industry. Applying that test, underwriters normally exercise subjective judgment in determining a vehicle is customarily used for a business purpose. Any customary business use generally results in a commercial rating, however, underwriting practices do vary. In 1980, the plan contained a similar test.1 Thus, Rule l.A. of the Plan Manual (P. L-1) provided in part as follows:

> B. A motor vehicle with a pick-up body, a panel truck, or a van owned by an individual, or husband and wife who are residents of the same household, and not customarily used in the occupation, profession or business of the insured, other than farming or ranching, shall be classified and rated as a private passenger automobile.

10. In the voluntary insurance market, commercial automobile insurance premiums are generally higher than the premiums for personal automobile insurance. Under the MAIP plan, however, the reverse is true. Although the base rate for commercial automobile insurance is higher under the MAIP plan than base rate for personal automobile insurance, the base rate is subject to a surcharge of as much as 425% for personal insurance, but the surcharge applicable to commercial insurance is limited to 35%. Consequently, a young driver with a poor driving record can realize a substantial premium savings if lie qualifies for a commercial insurance policy under the MAIP plan.

11. Commencing in 1980, Dworsky began filing a considerable number of applications for commercial automobile insurance with MAIP on behalf of the owners of pickup trucks and vans. Almost immediately, his activities were scrutinized by departmental personnel and disputes arose between Dworsky and

insurance companies regarding the polices they were required to issue and the
premiums that should be paid. The disputes with insurers related to various
applicants' entitlement to commercial automobile coverage, the applicable
premiums that should be paid by insured applicants, and the applicants,
entitlement to comprehensive and collision coverage under the plan.

lsince 1977, or before, pickups, vans and panel trucks were statutorily
defined as 'utility vehicles' if they were not used 'primarily' in the
business or occupation of the insured. Minn. Stat. S 65B.001, subd. 4
(1980). Utility vehicles are insured under 'private passenger vehicle
insurance' as defined in Minn. Stat. S 65B.001, subd. 2 (1980).

12. initially, when Dworsky received a policy which he believed to improperly classify an insured as a personal, rather than a commercial, risk;
which carried a premium which he believed had been improperly calculated; or which excluded risks he felt the insured was obliged to underwrite, Dworsky would reapply to MAIP on behalf of the applicant in order to obtain an assignment to a different insurance carrier. when the MAIP office discovered
that practice, it would reassign the new application back to the insurance
carrier to which the initial application had been assigned. Dworsky believed
that this practice was unauthorized under the plan rules in effect at that
time.2

13. In December 1980, Dworsky filed at least seven written complaints
with the Department complaining about various practices of insurers under the
plan" The Department acknowledged receipt of the those complaints and notified Dworsky that they had been referred to the Governing Committee for initial review. The Departmental acknowledgments advised Dworsky that the
Governing Committee's final ruling on those complaints was appealable to the Commissioner. On January 7, 1981, all of Dworsky's 'appeals' were denied.
Dworsky did not pursue the matter further with the Commissioner.

14. From 1980 through end of 1984, Dworsky handled from 400 to 500 MAIP applications. lost, if not all, of those applicants agreed, during Dworsky's
meeting with them, to pay an $800 'underwriting placement and counseling fee'. The applicants were told that they could receive business and tax advice by paying the fee and becoming part of Dworsky's truck-Van Business
Plan, which was a separate corporation Dworsky established to handle his MAIP
business. Although the applicants were told that they could get business and
tax advice, no such advice was solicited by the applicants and no significant
or meaningful advice of that nature was given to them by Dworsky. Dworsky
frequently failed to collect the full $800 fee charged to applicants, but those fees that were collected were credited to the account of Truck-Van Business Plan, Inc.

the MAIP plan authorizes a commission to the producing agent but is silent
on the charging of fees. As a general rule, agents seldom charge their clients a fee for placing automobile insurance through the voluntary market or
through MAIP. However, the charging of fees has become a more common practice
in recent years, especially in expensive (100,000 annual premiums or more)

commercial lines and in hard to place insurance involving low premiums. In complex commercial placements involving high premiums, fees are most commonly
charged in lieu of comissions.

2In 1980, a MAIP assignment to an insurance carrier was effective for three years-unless the original company canceled the policy for the nonpayment
of premiums and no reapplication for insurance was made within 60 days. See,
Respondents Exhibit 59, Section 18, p. 5 and Section 20, p. 8 (blue pages). According to Bechtel, the plan has now been changed so that new assignments are made every time a new application is submitted. However, Bechtel never advised Dworsky that he could reapply for assignment to a different insurer when he received a policy that was not appropriate for his client's needs.

The fees Dworskey charged to his clients have been known to the department since early 1980, and those fees have been discussed with him at various times since then. EArly in 1984, just prior to the commencement of this contested case, the Department told Dworsky that his fees were illegal and he was directed, through his counsel, to stop charging them. Thereafter, Dworsky continued to charge the $800 fee.

15. the fee agreement Dworsky's applicants signed did not indicate that the $800 fee was in addition to the premiums Dworsky would earn for placing the insurance through MAIP, or that the premiums the applicants would pay included a commission. However, in May of 1984, after this proceeding was commenced, Dworsky began using a written statement for all his applicants which disclosed the services for which his fees were charged, the amount of the fees, that the fees were being charged in addition to the premiums, and that the premiums the applicants would pay included a commission. Many of his existing clients signed the new agreement for fees they previously paid.

16. The ccmmissions earned by an insurance agent placing automobile insurance in the voluntary market range from 10% to 20% of the total premiums pa id. For high-risk drivers paying an annual premium of $2,500, commissions ,would range from $250 to $500 a year. If the same driver could obtain a commercial policy through MAIP, the commissions on a premium of $500, for example, would be only $50, because MAIP commissions are limited to 10%. A 10% commission would not cover the expenses Dworsky incurred soliciting prospective applicants for commercial insurance under the MAIP plan and successfully processing those applications. In addition to the time Dworsky spent studying the MAIP plan and the applicable rules, Dworsky spent a considerable amount of money identifying prospective applicants and screening the responses be received from them. Thereafter, he would spend from one to two hours in his initial meeting with them preparing their applications. Thereafter, if problems developed, which frequently happened, Dworsky would negotiate with the relevant insurance company underwriter to obtain a commercial rating. In this respect, he would obtain supplemental information verifying or supporting a commercial rating and he even sometimes hired independent investigators to verify the commercial usage. If that was unsuccessful, Dworsky processed appeals an behalf of his applicants or submitted new applications for them in the hopes of obtaining a reassignment to a different company. His continuing involvment with MAIP policies and the

problems he encountered took a substantially greater amount of time than would be involved in processing an application for automobile insurance in the voluntary market, which can usually be done in one-half hour or less. in fact, during the period between 1980 and 1984, Dworsky's profit margin on the average MAIP application he handled was insignificant, and as an accounting and business matter, it was an unprofitable operation.

17. Shortly after Dworsky's MAIP involvment began in 1980, his actions came to the_Department's attention. on June 20, 1980, he was ordered to appear before the insurance division staff on July 7, 1980, to answer questions concerning the truck van insurance plan and his alleged falsification of a MAIP application which was assigned to the Travelers indemnity Company. Dworsky and his attorney appeared for that meeting, and his truck-Van Business Plan and applications to MAIP were discussed. No further action was taken by the Department, although the Notice of Conference served upon Dworsky indicated that he could be subjected to a fine or other disciplinary action based on the outcome of that meeting.

18. Subsequently, on January 6, 1981, the Assistant Commissioner of Commerce issued a Notice of and Order for Hearing and a Statement of Charges. It alleged that Dworsky had engaged in unfair and deceptive practices by charging an $800 fee to his clients without disclosing that the same services that he provided were available at no cost from other agents, and by charging fees which were unreasonable in relation to the services he provided. Tie Statement of Charges proposed that Dworsky be ordered to cease and desist from the practices charged and that disciplinary action should be taken against him. A hearing was initially scheduled to be held on the charges on March 17, 1 981. No hearing was held and the contested case file at the Office of Administrative Hearings was later closed without any further action.

19. hi the summer of 1983, the Department received a complaint from Keith C. Olsen regarding Dworsky's handling of his MAIP application. In October, 1983, the Department commenced a full-scale investigation of Dworsky which lend to the issuance of a new Notice of and order for Hearing and Statement of charges. among other things, Dworsky was charged with the falsification of several MAIP applications.

Keith C. Olsen (Agency Exhibits 25 and 26)

20. Late in 1982, Keith C. Olsen received one of Dworsky's solicitations regarding cheap truck and van insurance. At that time, Olsen was self-employed in the lawn maintenance, landscaping and snow removal business and did business under the trade name 'Keith's lawn and Snow Service". On December 2, 1982, Olsen met with Dworsky for approximately one hour and completed a MAIP application. The MAIP application reflected the information that Olsen gave to Dworsky at that time. A few days after the application was filed, Dworsky received notice that the policy had been assigned to Home insurance company. In the past, Home Insurance Company had refused to write physical damage insurance on commercial policies it issued under the MAIP plan. One applicant, whose application was assigned to Home Insurance Company, had an accident during the binder period. Home refused to provide physical damage coverage or cover the damage to the applicant's truck. Dworsky believed that Home's actions violated the plan, but his appeals to the Governing Committee on that issue were denied. Ultimately, Dworsky reimbursed the applicant's $1,000 loss out of his own pocket.

Dworsky knew that he could not get a reassignment to a different insurer if a new application was submitted by Olsen, but he believed that reassignments were made on an alphabetical system, so that a new application

under a different name could result in an assignment to a different insurance carrier. therefore, to effectuate a reassignment, he and Olsen agreed that a second application would be submitted using a fictitious trade name 'Neslo Landscaping Service'. The name Neslo was derived from olsen's name spelled in reverse.

on December 9, 1982, Dworsky completed a new application listing the applicant as Neslo Landscaping Service and listing the registered owner as Keith Olsen. In preparing that application, Dworsky listed Bruce E. Nygren as the operator of Olsen's vehicle and listed Nygren's drivers license number.

Under the motor vehilce reporting section in part 9 of the application, Dworsky also inserted Bruce Nygren, but the violations he reported were those of Keith Olsen. when Dworsky completed the application, he signed Bruce Nygren's name to it. Nygren was never employed by Keith C. Olsen and did not authorize an application for Olsen or authorize Dworsky to sign his name to it.

The second application for Keith C. Olsen was assigned by MAIP to a different insurance carrier. on January 14, 1983, Dworsky notified the insurer that the application contained erroneous information and provided them
with the correct information. He informed them that the insured was Keith Conrad Olsen, d/b/a Neslo Landscaping Service, and that Olsen was the only operator of the vehicle. Effective January 14, 1983, the insurer issued a policy change indorsement showing Keith C. Olson, d/b/a Neslo Landscaping Service as the insured.

Except for his initial $150 payment to Dworsky, Olsen made no further premium payments to him. Dworsky called Olsen several times that winter requesting payment from him and warning Olsen that his insurance would be canceled if he did not pay. During one of those calls, Dworsky told Olsen that the cancelation of his policy was imminent. Olsen had no money to make the necessary premium payments. Consequently, he stopped making the premium payments due. Effective February 28, 1983, the insurer canceled Olsen's policy. olsen's copy of the cancelation notice was sent to him at Dworsky's post office box, since the application listed Dworsky's post office box for Olsen's street address. When the cancelation notice was received, it was not forwarded to Olsen.

In April, Olsen had an accident with his truck. At that time he learned that his insurance had been canceled. At Olsen's request, Dworsky communicated with the insurer arguing that his letter of January 14, 1983, amended the application and showed Olsen's correct street address. Dworsky took the position that since the insurance-company had not mailed the cancelation notice to the address shown on the letter, that it was not effective, and that the insurane company should cover the losses Olsen sustained in the accident. The insurer refused to pay. Subsequently, the other driver involved in the accident obtained a judgment against Olsen of approximately $550. That judgment is still outstanding against Olsen.

Joan Rieger (Agency Exhibits 33 and 35)

21. On April 16, 1981, Joan Rieger and her husband Gene met with Dworsky to discuss their insurance needs. At that time, Dworsky prepared separate MAIP applications for each of them. Mrs. Rieger's application requested a personal automobile policy. MAIP assigned both applications to the same insurer. The insurer applied Mr. Rieger's driving record to Mrs. Rieger's policy in computing the surcharges applicable for purposes of calculating her premium. Dworsky felt that MAIP's assignment of both applications to the same
insurer violated the applicable selection process set forth in the plan, and he objected to the insurer's application of Gene's driving record to his wife. He believed that that also violated plan rules.3

3The MAIP plan, Rule 6 (P. L-4, section I - Exhibit 59, white pages) provides that points be assigned for convictions of, and accidents involving,

the applicant as an owner or operator, and for convictions, and accidents involving anyone who usually operates the motor vehicle.

Instead of negotiating with the insurer to relieve Mrs. Rieger of her husband's driving record in the calculation of her premiums for a personal automobile policy, or challenging the insurer's actions with the Commissioner of insurance or the Governing Committee, Dworsky decided to submit another MAIP application for Mrs. Rieger under the fictitious name 'Joan Mieger'. It ,was fi led on or about August 20, 1981. in the second application, Dworsky also altered the vehicle identification number by one letter, added additional occupational information and altered the address of the prinicipal place garaging of the vehicle. In this way Dworsky hoped to obtain reassignment to a different insurance carrier who would not attribute Gene's driving record to her. Mrs. Rieger does not use the name Mieger, did not authorize Dworsky's use of that name and did not authorize him to sign an application under that name. MAIP reassigned the 'Mieger application' to the same insurance carrier. Again, it used Gene Rieger's driving record in computing Mrs. Rieger's premium. At that point, Dworsky discontinued his pursuit of MAIP insurance for Mrs. Rieger. He ultimately obtained insurance in the voluntary market for her. The premiums on that policy were computed without using her husband's driving record. However, the Riegers were required to file a written agreement that Gene would not be driving her vehicle.

Kevin Gravalin (Agency Exhibit 10)

22. On January 18, 1983, Kevin Gravalin completed a MAIP application with Dworsky's assistance. Gravalin told Dworsky at that time that he was a full-time Red Owl employee. However, Gravalin also told Dworsky that he was trained as a mechanic and that he used that experience to repair cars in his parents' two-car garage. He said he did a little work for relatives, friends and neighbors but did not always get paid for it, and he told Dworsky that he also used the truck to tow people out of ditches when it snowed and occasionaly to pick up parts.

The application Dworsky prepared for Gravalin did not state that he was a full-time Red Owl employee. Rather, it stated that Gravalin was self-employed and listed his occupation as "Car starting, towing, light engine repair'. The second page of the application described Gravalin's use of the vehicle as follows (Section. 12):

> applicant uses the described vehicle to service disabled vehicles on the road by jump-start or towing out of ditch on icy days. Also performs entire drive-train repairs using the truck for servicing a three car garage for this purpose at the applicant's home. It is warranted that the vehicle is used for the above purpose at least 60% on a tire and/or mileage basis.

Although Gravalin only drove one and one-half miles to get to work at Red Owl, he used his vehicle much more for personal uses than for business purposes. He did not tell Dworsky that he used his vehicle 60% of the time in business, although he signed an application attesting to that information. Both he and Dworsky knew that it was untrue.

William Patterson (Agency Exhibits 30 - 31)

23. On November 17, 1981, Dworsky completed a MAIP application for William Patterson. It listed Patterson's occupation as a painter helper working for Boyer Truck and Equipment. Ile insurer to whom the policy was assigned issued a personal auto policy to Patterson. Dworsky believed that a personal policy was inappropriate, so he amended and resubmitted the same application adding, under occupation, that Patterson "hauls firewood" and under the employer's name the additional words 'self-employed'. on the second page of the amended application, Dworsky added the following language:

> Applicant uses described vehicles to transport tools, supplies & products to & from the job site where he performs the duties of his occupation as an auto painter and weekends & evenings in the firewood business.

After the insurer received the amended application, it still refused to issue a commercial policy to Patterson. The premiums an this policy were never paid and the policy was subsequently canceled.

on February 15, 1982, Dworsky submitted a new application for Patterson listing the applicant as 'Auto Body Refinishing, Inc.'. Patterson was listed as the registered owner and operator of the vehicle. The second page of the new application described the operation of the vehicle as follows:

> Applicant uses described vehicle to transport tools, supplies and products to & from the job site where he performs the duties of his occupation of Auto Body & refinishing.

Patterson never worked for Auto Body Refinishing, Inc. However, he agreed with Dworsky to resubmit the application using a different name in order to get reassignment to a different insurer, and hopefully, a commercial automobile policy. Patterson never told Dworsky that he was in the firewood , business. He had hauled firewood for his parent's on occasion but was not in that business. Dworsky knew that Patterson did not work for Auto Body Refinishing, Inc., that he did not have a business by that name, and that he was not in the firewood business.

Dennis Thompson (Agency Exhibit 48)

24. On September 22, 1983, Dworsky prepared a MAIP application for Dennis Thompson. Ile application stated that Thompson was a parts runner for Agrihol and explained the use of Thompson's pickup as follows:

> Applicant uses the described vehicle to pick up parts for his employer at various locations in and around the Twin

city area. Applicant uses the truck for this purpose an a daily basis.

Thompson signed the application although he was not working for Agrihol at that time. Dworsky did not know that Thompson no longer worked for Agrihol.

Thompson was a full-time parts runner for Argihol in 1981 when he first went to Dworsky for insurance. His pickup was used primarily for that purpose at that time. In 1982, he worked at Agrihol only part-time and worked at Brockway Glass part-tire. Patterson did not use his truck for Brockway, except to get to work (ten miles each way). In 1983, Agrihol went out of business and Thompson went to work for Brockway on a full-time basis. He drove his truck to and from work at that time, but used a motorcycle for transportation in good weather. In addition to his employment with Brockway, Thompson used his truck on a regular basis plowing snow. In the winter months, his snowplowing could involve up to 100 miles weekly. Dworsky kenw about this business activity.

Keith A. Olson (Agency Exhibit 28)

25. On November 21, 1983, Dworsky completed a commercial MAIP application for Keith A. Olson indicating that he was an auto salvage employee at Metro Auto Salvage. The explanation of Olson's usage of his vehicle on page two of the application stated as follows:

> Applicant uses described vehile to make deliveries for employer and run parts and equipment to customers on regular basis. It is warranted applicant use vehicle 85% on time and/or mileage basis.

At the time this application was prepared, Olson worked full-time, 6 days a week at Metro Auto Salvage. Two or three times each week he would deliver parts for his employer on his way to or from work (13 miles each way).

Olson completed his first MAIP application in 1980 with Dworsky's assistance. At that time, Olson used his truck more than 50% of the time for work-related purposes. As the years passed, he used his vehicle for work related purposes a smaller percentage of the time. By 1983, he drove only an average of 50 miles weekly delivering parts, which included his mileage to and from work. His weekly mileage to and f ram work at that time was 156 miles (26 miles per day, 6 days each week). On his 1983 application, Olson estimated that he drove 15,000 miles each year. Driving 50 business miles weekly, Thompson would have only 2,600 annual business miles. Although Thompson clearly did not use his vehicle 50% of the time for business purposes in 1983, Dworsky was unaware of the reduced business use which had occurred since the time of olson's initial MAIP application.

Neal Emery (Agency Exhibit 8)

26. On July 25, 1984, Dwosky prepared a renewal MAIP application requesting commercial insurance for Neal Emery. Every had first applied for insurance through the MAIP plan with Dworsky's assistance in 1981. At that time, he was self-employed on a full-time basis in the lawn service, landscaping and snow plowing business. Tne truck he owned then was used soley for business purposes. However, at the time his renewal application was completed, Emery was a full-time employee at Paco. However, he was also

self-employed in his former business and used his truck fro business purposes.
up to 80% of the time depending on the time of the year. At the precise time
of his application, in July, Emery was driving his truck to work (14 miles one
way or 140 miles weekly) and was driving it from 2 to 50 miles per day in his
own business, averaging 20 to 50 miles per week at that time.

Craig Edward Kallenbach (Agency Exhibits 16 - 18)

27. In 1983, Dworsky submitted three separate MAIP applications on behalf
of Craig Kallenbach: February 23, 1983; November 10, 1983; and December 22,
1983. The first two vere submitted in Kallenbach's name and stated he was the
registered owner. However, the third application was submitted in the name of
"Craig's Plowing & Lawn Service' and falsely listed Edward Craig as the
registered owner. Kallenbach's real name was not revealed because Dworsky
wanted to obtain reassignment to a different insurer.

Mitchell L. Miller (Agency Exhibits 24 and 80)

28. On or about April 6, 1983, Dworsky submitted a MAIP application on
behalf of Mitchell Miller. The application stated that Miller's previous
policy had been terminated by Home Insurance Company for nonpayment.
Actually, the policy had been canceled by Home insurance Company effective
March 12, 1983 because Miller's driver's license had been revoked. Notice of
the revocation was mailed to Dworsky on February 28, 1983.

Thomas Roy VanGordon (Agency Exhibits 50 and 51)

29. on or about August 12, 1983, Dworsky submitted a MAIP application on
behalf of Thomas VanGordon. That application stated that VanGordon had not
been involved in an accident during the last 36 months, and failed to list his
specific motor vehicle violations during that time period. However, the
application indicated that there had been some convictions.

on March 29, 1982, Lakeland Fire and Casualty Co. wrote to Dworsky
advising him that VanGordon had been involved in a hit-and-run violation and a
violation for driving while intoxicated. According to Lakeland, both
violations occurred on October 10, 1980. However, state motor vehicle records
show that the violations occurred on August 10, 1980 and are not within the
three-year period covered by VanGordon's August 12, 1983 application.

30. As a general rule, insurance agents attempt to obtain complete

information from applicants regarding their traffic violations. Dworsky followed this practice. However, agents are rat concerned if an applicant's answers are inaccurate and incomplete. They know that insurers routinely obtain an applicant's driving record from the state and verify the driving history reported by an applicant.

In the insurance industry, agents have no recognized duty to verify information they obtain from an applicant. The verification of information is customarily considered to be the duty of the insurers' underwriters. in many cases, insurers do verfy information provided by applicants, although practices vary and, as a general rule, fewer investigations are made of MAIP applicants than are made of applicants seeking insurance in the voluntary market.

31. In the applications Dworsky submitted to MAIP on behalf of his clients, he routinely used his post office box number as the street address for the applicant. He followed this practice so he would get the policy issued by the insurer. Since an applicant does not know what insurer will be assigned a particular application, and since Dworsky did not know the terns of the various policies of all the insurers who participated in MAIP, he wanted to obtain a complete copy of the policy issued so that he could examine it. Merely having the declarations page, which would normally be sent to the agent, was inadequate for his purposes.

32. Tne street address listed on an application for insurance through the MAIP program is not important to an insurer except for billing purposes. For underwriting purposes, the important address is the place where the vehicle will be garaged. The MAIP plan has no rules regarding an agent's use of his address in place of an insured's street address or the use of post office box addresses generally. However, after Dworsky regularly began filing MAIP applications, when he filed an application listing his post office box number as a street address, MAIP advised insurers that the Governing Committee required the use of the applicant's actual street address. MAIP never advised Dworsky that the use of post office box numbers was not permitted, but when Dworsky learned of their position, he stopped using his post office box number.

33. Effective February 22, 1982, the test for determining whether a particular risk should be considered a personal, private passenager risk or a commercial risk was changed in the MAIP manual. Notice of that change was distributed on December 1, 1982, and was retroactively effective. Tne new test adopted at that time excluded from the definition of a private passenger automobile those pickup trucks, panel trucks and vans which were not p used principally' in the occupation profession or business of the insured. Previously, pickup trucks and vans had been excluded if they were %customarily" used in the insured's business. The change notice contained MAIP's interpretation of this language that the word 'principally' meant that the vehicle is used 50% or more for business purposes on a time and/or mileage basis. In assigned risk plans generally, the classification of risks as

commercial or personal has been a country-wide problem. MAIP hoped to solve the problem in Minnesota by this amendment.

Dworsky became aware of the new test late in 1982. Thereafter, he began explaining an applicants percentage use of the vehicle on a time and mileage basis. After MAIP adopted the new test, insurance companies did not uniformly follow it. Some continued to follow their prior practices, even if that resulted in commercial ratings when the business usage was less than 50% on a time or mileage basis.

34. In December 1981, Dworsky filed an application for an insurance agent's perpetual license. The application asked (Question 10) whether the applicant had ever been 'cited to appear before the insurance division of this or any other state for an infraction of the insurance laws of good practice in an answer to this question, Dworsky checked the blank adjacent to the word 'No', indicating that the had never been so cited. His answer to that question was untrue.

35. the scancard Personal automobile policy used in Minnesota has provisions that Dworsky believes are inappropriate for individuals customarily using a pickup or van for business purposes. The standard policy (Respondent's Exhibit 34, p. 1) defines the covered vehicle as 'a pickup panel truck of van, not used in any business or occupation other than farming or ranching'. In addition, it defines a trailer as a vehicle designed to be pulled by a pickup, panel truck or van 'if not being used in any business or occupation other than farming or ranching'. Moreover, there are Exclusions to liability coverage which Dworsky felt jeopardized his client's coverage. The standard auto policy (Exhibit 34, p. 3) excludes liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. Dworsky believed that clients who delivered parts for their employers would be excluded from coverage under this provision. Likewise, an exclusion to liability coverage exists when the insured is employed or otherwise engaged in the business or occupation of selling, repairing, servicing, storing or parking vehicles. while this Exclusion does not apply to the ownership or maintenance of a covered vehicle under the policy, Dworsky felt it impaired the coverage needed for clients who customarily repaired automobiles. Moreover, Exclusion 7 (p. 3) excludes the use of any vehicle while the insured is employed or otherwise engaged in any business or occupation not covered in Exclusion 6.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Administrative law Judge and the Commissioner of Commerce have subject matter jurisdiction herein pursuant to Minn. Stat. SS 60A.17, subd. 6c, 14.50 and 72A.23, subd. 1 (1982)._

2. That the Respondents received due, timely and proper notice of the hearing in this matter and that the Department has complied with all relevant substantive and procedural requirements of statute and rule.

3. That under Minn.Admin.R. 1400.7300, subp. 5, the Department has the burden of proof in this case to establish by a preponderance of the evidence that the Respondents have engaged in conduct which subjects them to disciplinary action. This evidentiary standard is consistent with existing case law. See e.q., Steadman v. Securities & Exchange Commission, 450 U.S.

91 (1981) and is consistent with prior decisions in contested case proceedings. See e.g., In the Matter of the Real Estate Salespersons License of Robert M. Simone, OAH Docket No. SEC-81-014-RL (dated December 17, 1981).

4. That the Respondents, between August 1, 1981 and May 1, 1984, violated the provisions of Minn. Stat. S 60A.17, subd. 6b by failing to provide their clients with a written statements advising those clients that the fees the Respondents charged were in addition to premiums and that the premiums paid by the clients included a commission for the Respondents.

5 . the Department has tailed to establish by a preponderance of the evidence that the fees the Respondents charged to their clients were unreasonable in relation to the services rendered for purposes of Minn. Stat. 6OA.17 subd. 6b(b) (1982).

6. That an insurance agent is not prohibited by Minn. Stat. S 65B.09, subd. 1(3) (1982) from charging fees and also collecting premiums on insurance placed through the MAIP program, and the collection of such fees in addition to commissions is not prohibited under the MAIP plan.

7. That the Respondents' use of their post office box number for the street addresses of their clients on applications for insurance under the MAIP plan had an authorized and legitimate business purpose and does not constitute a misrepresentation of the terms of an insurance contract, a willfully false or fraudulent statement on an application for insurance, or fraudulent, coercive, or dishonest practices for purposes of Minn. Stat. S 60A.17, subd. 6c (1982).

8. That the Respondents falsely stated on one MAIP application that the vehicle to be insured was used principally for commercial purposes when it was used principally for personal use, and have thereby made knowingly false statements on applications for insurance and have used fraudulent or dishonest practices for purposes of Minn. Stat. SS 72A.04 and 60A.17, subd. 6c(a)(8) and (9) (1981).

9. That the Respondents have made untrue statements of material fact on MAIP applications and have thereby violated the provisions of Minn. Stat. SS 72A.04 and 60A.17, subd. 6c(a)(8) and (9) (1982).

10. That the Respondents failed to forward the notice canceling Keith C. olsen's automobile insurance policy technically violating Minn. Stat. sec. 60A.17, subd. 6c(a)(9) (1982).

11. That the Respondents have forged signatures on two MAIP applications in order to obtain new assignments to different insurance carriers for their clients, thereby violating the provisions of Minn. Stat. S 60A.17, subd. 6c(a)(11) (1982).

12. That the Respondent, Ross Henry Dworsky, made a materially untrue statement in his application for an insurance agent's perpetual license in December, 1981, when he stated that he had never been cited to appear before the Department for an infraction of the insurance laws of good practice, thereby violating Minn. Stat. sec. 60A.17, subd. 6c(a)(1) (1981 Supp.).

13. That the Dworsky Agency, Inc. has violated Minn. Stat. S 60A.17, subd . 1 (1983 Supp.) by failing to obtain an insurance agent's license.

14. That as a result of the Respondents' violations of law, they are subject to disciplinary action under Minn. Stat. sec. 62A.17, subd. 6c (1984).

15. That disciplinary action is in the public interest.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following.

RECOMMENDATION

That the Commissioner of Commerce take disciplinary action against Ross Henry Dworsky and the Dworsky Agency, Inc. No specific disciplinary action is recommended as such recommendations are prohibited by policies of the Chief Administrative Law Judge.

Dated this day of April, 1985.

JON L. LUNDE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. S 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped Recorded

MEMORANDUM

Pursuant to Minn. Stat. S 60A.17, subd. 6c, the Commissioner of Commerce may suspend or revoke an insurance agent's license for a variety of causes. Among other things, the Commissioner may revoke or suspend such licenses or impose a civil penalty not to exceed $5,000, or both, if, after hearing, the commissioner finds any one or more of the following conditions:

(1) Any materially untrue statement in the license application;

(2) Any cause for which issuance of the license could have been refused had it then existed and been know to the commissioner at the time of issuance;

(3) Violation of, or noncompliance with, any insurance lazy or violation of any rule or order of the commissioner or of a commissioner of insurance of another state or jurisdiction;

(4) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(6) Misrepresentation of the terms of any actual or proposed insurance contract;

(8) That the licensee has been found guilty of any unfair trade practice, as defined in chapters 60A to 72A, or of fraud;

(9) That in the conduct of the agent's affairs under the license, the licensee has used fraudulent, coercive or dishonest practices, or the licensee has been shown to be incompetent, untrustworthy, or financially irresponsible;

(11) That the licensee has forged another's name to an application for insurance; or

(12) That the licensee has violated subdivision 6b.

Under Subdivision 6b, no person may charge a fee for any services rendered in connection with the solicitation, negotiation or servicing of any insurance contract unless:

(a) prior to rendering the services, a written statement is provided disclosing:

(1) the services for which fees are charged;

(2) the amount of the fees;

(3) that the fees are charged in addition to premiums; and

(4) that premiums include a commission;

(b) all fees charged are reasonable in relation to the services rendered.

Tne Respondents violations of the insurance laws are set out in a Second Amended Statement of Charges containing 12 Counts.

Count I

Count I alleges that the Respondents have violated Minn. Stat. 60A.17, subd. 6b, which requires insurance agents who charge a fee to their client for negotiating insurance contracts to provide a written statement to their clients before the services are rendered which discloses the services for which fees are charged, the amount of the fees, the fact that the fees are charged in addition to premiums and that the premiums include a commission. Tne evidence presented clearly establishes that the Respondents violated this requirement for several years. Although the Respondents did use a written contract form providing for fees, that form did not state that the premiums to be paid also included a commission. Moreover, the contractual form used did not state that the fees charged were in addition to premiums or the specific services for which the fee was charged.

Although the Administrative Law Judge is persuaded that Dworsky was ignorant of this requirement until he received the Statement of Charges in this case, his ignorance is not a good defense to the charge. Insurance agents are required to know the laws and regulations applicable to their activities and to comply with them. However, as soon as he became aware of those requirements, he immediately drafted a new written statement to comply with the statute. His clients knew that they were being charged fees in addition to premiums and generally knew the services for which the fees were being charged; however, they did not know that Dworsky was also receiving a

commission of up to $100 out of the premiums they paid.

The Department has argued that the Respondents failure to comply with the provisions of 6A.17, subd. 6b(a) constitutes a misrepresentation of the terms of an insurance contract and fraudulent, coercive, or dishonest practices for purposes of Minn. Stat. S 60A.17, subd. 6c(a)(6) and (9). Dworsky's failure to make the required disclosure does violate the provisions of subdivision 6c(a)(9). when an insurance agent has a statutory duty to

disclose facts about the fees and commissions he receives, the failure to do so is dishonest. However, Dworksy's failure to disclose that other agents would provide similar MAIP coverage without charging a fee was not fraudulent or dishonest. Such a disclosure is not statutorily required, and no authority was cited to support the proposition that a businessman has a duty to inform his clients that similar services or products Pay be available elsewhere at a lower cost. Moreover, as a practical matter, there is no persuasive evidence that other agents are generally willing to write MAIP insurance. In fact, the record strongly suggests that the contrary is true; namely, that other agents do not publicize MAIP insurance and do not write it unless a client is unable to get insurance in the voluntary market. If voluntary market insurance is available, agents do not use MAIP to obtain lower premiums, either because of the commission losses they will incur or because they are unaware of the savings available for certain owners of pickups and vans. The Department has not shown how the failure to make the required disclosure constitutes a misrepresentation of the terms of an insurance contract. Dworsky's agreement with his clients is not part of the insurance contract. The statute prohibiting the misrepresentation of an insurance contract applies to the contract defined in Minn. Stat. S 60A.02, subd. 3, not to the agreements, if any, between the agent and his client.

Count II

The Respondents have also been charged with a violation of Minn. Stat. sec. 60A.17, subd. 6b(b) on the grounds that the $800 fee typically charged by them to clients they placed through the MAIP plan were unreasonable in relation to the services rendered. The Administrative Law Judge is not persuaded that the fees charged were unreasonable in relation to the services rendered.

Tne record strongly suggests that very few licensed automobile insurance agents in the State of Minnesota have any substantial volume of MAIP business and rarely use it. As was mentioned, this is probably due to that the fact that the commissions they can earn placing a client through MAIP are substantially smaller than the commissions they will earn if that client is insured through the voluntary market. Indeed, this may be precisely what the

Legislature intended. Under Minn. Stat. S 65B.01, subd. 1, the Legislature has encouraged the maximum use of the normal private insurance system. Moreover, the Legislature has required agents to offer MAIP coverage only if the applicant is ineligible or unacceptable for coverage by other insurers for whom the agent is authorized to solicit business. These provisions, coupled with the strict eligibility requirements contained S 65B.10, indicate that the Legislature wants MAIP to be used only as a last resort.

The lack of any evidence on the frequency of insurance agents' use of MAIP, coupled with the cited statutory provisions, and the fact that the 500 applicants Dworsky found were not already in the MAIP program, suggest that MAIP is not a commonly used system for obtaining cheaper automobile insurance.

In evaluating the reasonableness of the $800 fee Dworsky typically charged, the services received by his clients must be considered. The services Dworsky provided to those individuals included the benefits of the

expertise he obtained studying the MAIP plan, the time he spent working with his clients and the efforts required to identify those individuals that could benefit by a MAIP application. other insurance agents do not generally publicize the availability of insurance under the MAIP program or the premium savings that can result to an individual who qualifies for a commercial policy. Dworsky had to spend relatively large sums of money identifying those persons who could benefit from a MAIP policy. Thereafter, he was required to screen those applicants to eliminate those who could not benefit by his services. It is clear, therefore, that the first service Dworsky offered was the service of identifying those individuals who could benefit from a commercial MAIP policy. By identifying those individuals, he was able to save them as much as $2000 annually in automobile insurance premiums. in order for those individuals to realize those savings, Dworsky was required to identify and screen them at a considerable personal cost.

Moreover, Dworsky spent a much greater amount of time working with MAIP applicants than would be normally spent with an applicant for voluntary automobile insurance. In the voluntary market, an application for automobile insurance is not a time-consuming activity and may take less than 20 minutes. However, the record in this case shows that Dworsky spent a considerably greater amount of time filing applications on behalf of his clients, amending those applications, obtaining supplementary verification of commerce usages, negotiating with insurance carrier underwriters, filing appeals with the MAIP Governing Committee and the Commissioner of Insurance and examining policies from a host of different insurers. Moreover, the obtaining of insurance under the MAIP plan involved different and unique problems for his clients. He had to examine unfamiliar policy provisions and examine insurance policies in depth to make sure that the coverage provided was adequate. In this regard, he had to watch out for exclusions and endorsements which were not commonly found in the voluntary market.

In determining the reasonableness of Dworsky's fees it is also appropriate to examine the commissions an agent receives for placing insurance in the voluntary market. Those commissions, for a high risk driver, can easily reach $300 annually. That $300 is paid for services taking no more than one-half hour of an agent's time. The commissions payable under a MAIP policy are substantially lower, but the time and effort involved is greater. A one-time $800 fee, under these circumstances, does not seem unreasonable. This is especially true given the fact that the fee could be paid out of one year's premium savings. For all these reasons, the Administrative Law Judge is persuaded that the fee was a reasonable one.

Even if the Commissioner reaches a contrary conclusion, as a pratical matter Dworsky's clients benefited greatly from his assistance, were satisfied with his services and realized a monitary savings even after Dworsky's fee was paid. in addition, it is clear that Dworsky was not 'gouging' his clients. During the period from 1980 through 1983, his net earnings on a typical MAIP contract, in:spite of his high volume, were insignificant.

Count III

The Department has alleged that the Respondents receipt of a fee in addition to the uniform commissions authorized to placing agents, violates Minn. Stat. S 65B.09, subd. 1(3) and constitutes a fraudulent, coercive, or

dishonest practice for which they should be disciplined. That argument is not persuasive. Under Minn. Stat. S 65B.09, subd. 1(3), insurance agents who place MAIP insurance are entitled to receive a commission at the uniform rate provided for in the MAIP plan. Mimi. Stat.S 65B.09, subd 1(3), merely requires that agents receive a commission for placing insurance through the MAIP plan at a uniform rate established in the plan. The statute is silent on the collection of fees in addition to premiums and contains no limiting language whatsoever. Likewise the MAIP plan is silent on the receipt of fees by insurance agents. The plain language of the statute only requires insurers to pay a uniform commission to insurance agents. It was not designed to limit, in any manner, the fees that an insurance agent might otherwise charge to an insured. That this is true follows from the language of Minn. Stat. S 60A.17, subd. 6b, which tacitly authorizes fees for any insurance agent so long as the written statement specified in the statute is provided and the fees are otherwise reasonable. Consequently, it is concluded that the mere charging of a fee to an applicant for insurance under the MAIP plan is not unauthorized and is not, by itself, illegal fraudulent, coercive or dishonest.

Count IV

On the MAIP applications prepared by the Respondents, they routinely inserted their post office box number in the space designated for the applicant's street address. The Department alleges that the Respondents' use of its post office address in this manner was knowingly false and constituted a misrepresentation of the terms of an insurance contract and fraudulent, coercive or dishonest practice justifying disciplinary action. The Administrative Law Judge is not persuaded that the inclusion of the agent's business address in that section of the MAIP application calling for the insured's street address is fraudulent, coercive or dishonest or otherwise violates any, provisions of the state insurance laws.

Me Respondents placed their post office box number in the space designated for the street address of MAIP applicants so that Dworsky would receive and be able to examine the policy ultimately issued by the insurer. Di the voluntary isurance market, such an examination is customarily made by agents, who consider it necessary to verify the coverage on a policy and to detect mistakes, which commonly occur. In the voluntary market, an agent is normally able to do this by merely examining the declarations page because the

agent is familiar with the policies of his companies. However, under the MAIP system, the agent and the insured have no idea, at the time of the application, which insurance company will issue the policy, and the agent is commonly unfamiliar with the policy provisions of those companies. Consequently, in order for the agent to perform his job, he must examine the policy itself to determine if the insured is getting the type of coverage desired or needed and that no mistakes have been made. The best way to do this is to examine the policy itself.

Use of tie agent's post office box is not prohibited by the MAIP plan. rules, and although MAIP has instructed insurers not to rely on post office box numbers or to accept the agent's address for that of the applicant, Dworsky was never instructed to stop using his post office box number in the manner in which he did, even though MAIP was clearly aware of his practice.

-,he MAIP application requuests the applicant's street address so that bills and other communications will be received by the applicant. However, an applicant has the right to direct that such communications be sent to his agent for handling. Clearly, the form is designed to secure an address where bills and other materials may be sent, and is not solicited in order to identify the actual street address where the insured lives, as that is immaterial to the insurer. The only address the insurer needs is the address where the vehicle to be insured is garaged. Thus, the use of Dworsky's post office box is not false. On the contrary, it is the place where the insurance company is to address mail for the insured. The insured has a right to have his mail sent to his agent. For these reasons, it is concluded that the use of the Respondent's post office box for the street address of his clients is not fraudulent, coercive or dishonest and should not expose the Respondents to disciplinary action.

Counts V and VI

In Count V the Respondents are charged with having falsely stated that the vehicles listed on 33 separate applications were used principally for commercial uses when the principal use was, in fact, for personal purposes. In Count VI the Respondents are charged with making other misrepresentations on at least 20 applications. For the most part, these charges were not established with any preponderating or probative evidence. Those applications raising factual issues are discussed below.

With respect to Count V, only three applications contain a specific representation that the relevant vehicle was principally used for commercial purposes: Gravalin's, which alleged 60%; Kallenbach's, which alleged 60%; and Keith A. Olson's, which alleged 85%. However, the evidence presented only establishes that the representations on Gravalin's application are untrue. No persuasive evidence establishes any misrepresentation on Kallenbach's or olson's applications.

On the Gravalin application, the Administrative Law Judge is persuaded that Dworsky knew that the percentage figure listed for commercial use was untrue and that he knowingly participated in the presentation of false information on the application. Gravalin's testimony on that issue was more credible and persuasive. However, the Administrative Law Judge is not persuaded that Dworsky was aware of the change in Olson's duties at work

after the time of his initial application. Although Olson does not recall telling Dworsky that he used his vehicle for commercial purpose 85% of the time, he did not deny it, and clearly did not recall what he had said. Due to Olson's uncertainty, the length of time since the conversation occurred, and the credibility of Dworsky's testimony, it is concluded that the evidence is insufficient to establish a knowing misrepresentation on Dworsky's part.

No misrepresentation of the kind alleged by the Department in Count V occurred on the applications for William Patterson. At the time the relevant applications for that individual were filed with MAIP, the "principal use' standard had not yet been adopted and Dworsky made no representations regarding the percentage use of Patterson's vehicle for business or commercial purposes. The only other application that is even arguably within Count V is the application for Dennis Thompson. That application contained incorrect

information as to Thompson's current use of his truck. Thompson was no longer a parts runner for Agrihol but was, at that time, a full-time employee working at Brockway Glass. However, the evidence presented does not establish by a preponderance of the evidence that Dworsky knew about Thompson's change in employment. Even if Thompson told Dworsky about the change, Thompson testified that on an annual basis his truck was used principally for snow removal purposes, and that he ray have been qualified for a commercial policy in any event. Therefore, as to Thompson's application, it cannot be concluded that the Respondents falsely stated that his vehicle was used principally for commercial purposes.

once Dworsky explained the eligibility criteria for a commercial automobile policy under the MAIP plan to his clients, they had a strong financial incentive to overstate the commercial usage of their pickups and vans. Likewise, when their commercial usage changed, they would have the same incentive to withhold unfavorable information. The Administrative Law Judge is persuaded that the reliability of Olson's and Thompson's testimony is weakened by the incentives they had to withhold current information which could jeopardize their continued eligibility for a commercial automobile policy.

The Department implies that the mere request for commercial coverage under a MAIP application is fraudulent if the applicable vehicle was not used principally for commercial purposes. That is not a persuasive argument. In 1980, and until the fall of 1982, the MAIP plan excluded pickups and vans from the definition of private passenger vehicles if they were customarily used for a business purpose. Dworsky, like some insurers, interpreted !hat language to mean that any customary business usage required a commercial policy. That was the test employed in the voluntary market. Given the language in the plan, customary practices in the insurance industry, and the subjective nature of underwriting decisions pertaining to the classification of trucks and vans used in an applicant's employment, business or profession, the Administrative Law Judge is not persuaded, by a preponderance of the evidence, that Dworsky's MAIP applications prior to 1983 were fraudulent. That is, that Dworsky wrote a commercial MAIP application knowing that the vehicle was not customarily used for business purposes.

It is clear that several insurers did not apply the customary use test prior to 1983. Dworksy honestly believed they were wrong by not doing so. However, their use of a principal use test appears to have been proper. From 1980, or before, Minn. Stat. S 65B.001, subd. 4, contained a primary use test. Such a test is more consistent with a principal use standard than a

customary use standard. Nonetheless, there were grounds for honest differences of opinion. Given the confusion that existed, it is concluded that the mere filing of a MAIP application requesting commercial coverage was not fraudulent prior to the fall of 1982, if Dworsky believed that the applicant 'Customarily used his truck or van for any business purpose.

When the MAIP plan was amended, however, Dworsky was responsible for submitting MAIP applications for commercial insurance only if he believed that the applicant used his truck for commercial purposes, on a time or mileage basis, 50% of the time. Except for the Gravalin application, there is no persuasive evidence that he did not do so. Neal Emery was not using his vehicle principally for commercial purposes at the precise time of his application, but there is no persuasive evidence that it was not used principally for business purposes on an annual basis.

operator on the Kallenbach application when he listed Edward Craig as the registered owner. Since Nygren was not the operator of this vehicle, did not work for Neslo Landscaping Service and did not authorize his signature to this application, Dworsky's placing of his signature on it constituted a forgery which, for purposes of the statute, should be construed to mean the false making of a writing which, if geniune, might apparently be of legal efficacy or the foundation of a legal liability. See, e.g., 37 C.J.S., Forgery S 1.

Likewise the Administrative Law Judge is pursuaded that Dworsky forged the signature of Joan Mieger to the second or third application he filed on behalf of Joan Rieger. Although Dworsky may have had authority to sign Joan Rieger's name to an application, he did not have her authority to sign a fictitious name to an application on her behalf.

Count IX

Under this Count the Respondent is charged again with failing to inform Keith C. Olsen and others that their insurance policies had been canceled. As to Olsen, this Count is redundant and needs and warrants no further discussion. As to the others, no evidence supporting the charges made was presented.

Count X

In this Count, the Respondents are charged with having engaged in unfair and deceptive trade practices. Under Minn. Stat. SS 72A.20, subd. 11 and 72A.19, unfair and deceptive trade practices include the securing of premiums by fraudulent representations (Minn. Stat. S 72A.03); knowingly Raking false or fraudulent statements on insurance applications (Minn. Stat. S 72A.04); and misrepresenting the terms of any insurance policy (Minn. Stat. S 72A.20, subd. i).

Some unfair and deceptive trade practices are criminal. See, eg, Minn. Stat. S 72A.04. In addition, all unfair and deceptive practices are subject to cease and desist orders issued by the Commissioner. Minn. Stat. S 72A.23. In addition, such practices are grounds for disciplinary action under section 60A.17, subd. 6c(a)(8), which provides that an insurance agent is subject to disciplinary action if "the licensee has been found guilty of any unfair trade practices, as defined in chapters 60A to 72A, or of fraud."

The Respondents argue, first, that no disciplinary action may be taken

against them in the absence of a conviction, which has not happened. That argument is not persuasive. Although the violations of sections 72A.03 aid 72A.04 are criminally punishable, a conviction is not a condition precedent to disciplinary action for unfair or deceptive trade practices. Under section 60A.17, subd. 6c(a)(8), disciplinary action is authorized if the agent has been 'found guilty' of deceptive practices. Those words are not synonmyous with 'convicted'.

Words in a statute are to be construed in their ordinary, popular sense. Minn. Stat. S 645.08(l). The word 'guilty' generally means: 'justly chargeable with or responsible for' a breach of conduct. It is not restricted to criminal activity or convictions. See also, Black's Law Dictionary, p. 836

(Rev. 4th Ed. 1968) and 39 C.J.S., Guilty, p. 448, which are generally in accord. That the Legislature did not intend to require a conviction for deceptive trade practices, is evident from section 60A.17, subd. 6c(a)(7), which authorizes disciplinary action for certain 'convictions'. Use of the word "convictions' in one part of the statute, and the words 'found guilty" in a prior clause, strongly suggests that the Legislature knew the difference between these words and intended different meanings by their use. Administrative proceedings involve a different burden of proof then criminal proceedings, and such agencies may normally take disciplinary action for unlawful conduct even where the perpetrator has been found innocent. That is die to the fact that administrative disciplinary proceedings are not designed to punish an offender, but to protect the public interest. Given the wide range of remedies available to the Commissioner, and for the reasons stated above, it is concluded that no conviction is required before disciplinary action for deceptive trade practices may be taken.

The evidence presented does show that the Respondents knowingly made numerous false statements and misrepresentations on MAIP applications. They are, therefore, subject to disciplinary action. However, the evidence presented does not establish that the Respondents committed a deceptive trade practice by using their post office box number, charging an $800 fee, or using an initial solicitation form that failed to disclose that the application was required to be a commercial risk in order to obtain cheap insurance. As was previously discussed, the fees charged were not unreasonable and the use of his post office box was not fraudulent. Moreover, it is concluded that there is no credible evidence to support a finding that the fees charged were not disclosed.

Adthough the Respondents' initial mailing did not disclose that an applicant would be required to obtain a commerical classification to maximize premium savings, the failure to discuss the complexities of that issue in a preliminary solicitation was not deceptive: The applicants were screened by subsequent telephone surveys so that those not using their vehicles for commercial purposes would be eliminated.

Count XI

Under this Count Ross Dworsky is charged with making a materially untrue statement in his application for a perpetual insurance agent's license. That charge has clearly been established. Di that application, Dworsky answered *now to the question: 'Have you ever been cited to appear before the insurance division of this or any other state for an infraction of the insurance laws of good practice?' The Respondent argues that the answer to this question was not completed by him and that the question is unreasonably vague and

unenforceable in any event. The Administrative Law Judge is not persuaded by those arguments. The word 'cited" in the question on the application is not vague. The Usual and generally excepted meaning of the word is 'to call upon officially or authoritatively to appear (as before a court).* Webster's New Collegiate Dictionary, p. 203 (1975). The popular meaning of that word is synonymous with its legal meaning which is 'to summon" or "to command the presence of a person' or 'notify a person of legal proceedings against him and require his appearance'. Black's law Dictionary, p. 310 (Rev.4th.Ed. 1968).

Under Count VI the Department has established so ral instances where Dworsky knowingly misrepresented facts on applications submitted for his clients. The applications filed for Keith C. Olsen contained a fictitious trade name 'Neslo Landscaping'; the second or third application filed for Joan Rieger used the fictitious name "Joan mieger', contained a fictitious vehicle identification number and a fictitious address for the principal place of araging; the application for Kevin Gravalin failed to disclose that he was a full-time Red owl employee; the amended application for William Patterson falsely indicated that he hauled firewood as a business, and a second application for that individual listed a fictitious employer 'Auto Body Refinishing, Inc."; the third application Dworsky submitted for Craig Kallenbach falsely listed Edward Craig as the owner of the vehicle; and the 1983 application Dworsky submitted for Mitchel Miller falsely stated that Miller's last policy had been canceled for the nonpayment of premiums rather than the revocation of Miller's driver's license.

Most of the factual misrepresentations made by Dworsky were made in an attempt to obtain reassignment to a different insurer who might issue a commercial policy. In those cases, Dworsky believed that the Company which had originally received the assignment had improperly applied the provisions of the MAIP plan by refusing to issue a commercial policy, applying exclusions or special endorsements that were inappropriate to his client or by attributing the driving record of one family member to another. When this happened, Dworsky would falsify inforuation on different applications in the hope of obtaining the coverage he felt was appropriate upon a reassignment to a different insurer.

Dworsky's actions were clearly inappropriate. Under Minn. Stat. S 65B.04, subd. 4, automobile insurers are bound to the MAIP plan of operation. Under Minn. Stat. S 65B.12, subd. 1, any participating member, applicant or person insured under a MAIP policy may request a formal hearing before the Governing Committee on any alleged violation of the plan of operation, and the Governing committee's final decision may be appealed to the Commissioner of commerce and heard as a contested case proceeding. The MAIP plan elaborates on these rights. If Dworsky believed that the plan was being improperly interpretated or applied by the MAIP office or Minnesota automobile insurers, he could have raised his objection before the Governing Committee and appealed any adverse decision to the Commissioner for review. Dworsky did bring sore appeals before the Governing Committee. Although he was not permitted to appear before the Governing Committee to argue his appeals, and although they were all denied in a one page letter containing no findings, conclusions or rationale, Dworsky should have pursued them with the commissioner of Commerce. However, he decided to create his own remedy. The self-help he chose consisted of filing false information in order to get reassignments to insurers who he believed might apply the plan as he read it. That was

inappropriate and did not justify the filing of false information on application,forms.

It has not been shown that the misrepresentations Dworsky made resulted in the issuance of inappropriate automobile insurance policies, but his misrepresentations did interfere with the proportional assigment of applications to Minnesota insurers and may have impaired the coverage of the his clients until the false information was corrected.

Count VII

The only charge in Count VII on which evidence was presented is the charge that Dworsky failed to notify Olsen of the cancelation of his insurance policy by forwarding the insurer's cancelation notice to him. It is clear that Dworsky received the cancelation notice from the insurer. It was sent to Olsen at Dworsky's post office box, and the Administrative Law Judge is persuaded that it was not forwarded to Olsen, who never received it. Although Dworsky told Olsen on several occasions that his policy would be canceled if Olsen did not make his premium payments, and although Olsen should have known by the time of his accident that his policy had likely been canceled, Dworsky had an obiligation to forward that cancelation notice to him. The failure to do that, ray have resulted from neglect, poor office procedures or a deliberate decision not to forward the cancelation notice since Olsen had been advised that his policy would be canceled. Whatever the reason, the failure to forward that cancelation notice to Olsen does evince some incompetency, but does not establish any fraudulent, coercive or dishonest practices or any untrustworthiness or financial irresponsibility as charged by the Department.

Count VIII

In this Count, the Respondents are charged with having forged the signatures of Joan Mieger (on the second Rieger application) and the signature of Bruce E. Nygren on the second Keith C. Olsen application. The forging of another's nave to an application for insurance is grounds for disciplinary action under Minn. Stat. S 60A.17, subd. 6c(a)(11). The question, then, is whether the false signatures Dworsky added to the Olsen and Rieger applications were forgeries.

As a general rule an agent can sign a document for his principal. 2A C.i.S. Agency, S 249. That general rules applies to insurance agents. See, 44 C.J.S., Insurance S 169. With respect to signatures on applications, the general rule, in the absence of a statute to the contrary, is that an application in writing should ordinarily be signed by the applicant or someone acting under his authority. 44 C.J.S., Insurance S 232, p. 973. As noted therein, the purpose of signing an application is to bind the applicant to the statements made therein and to establish that the application is not a mere memorandum for the convenience of an agent, but has been adopted by the applicant as his application.

The evidence presented clearly shows that Dworsky forged the signature of Bruce Nygren to the application that was submitted on behalf of Neslo Landscapine Service in an effort to obtain a reassignment of Olsen's application to a different insurer. The Respondents argument that the use of Bruce Nygren's name on this application was a mere mistake having no manifest purpose is not persuasive. The obvious purpose was to obtain reassignment by changing the name of the applicant from Keith C. Olsen to Neslo Landscaping Service and by changing the operator information from Keith C. Olsen to Bruce E. Nygren. Dworsky made a similar attempt to conceal the identity of the

In this case Dworsky had previously been authoritatively cited and required to appear before the Commerce Commissioner on two separate occasions. Moreover, the reference to infractions of the insurance laws of good practice is not unreasonably vague and would be understood by a reasonable person to mean any non-technical violations of the insurance laws. See, e.g., In re Charges of Unprofessional Conduct Against N.P., 361 N.W.2d 386, 394 (Minn. 1985). Infractions relating to excessive or illegal fees or factual misrepresentations on applications, for which Dworsky had been cited to appear, are clearly within the plain language of the question.

While Dworsky argues that the "X" on the application is not his, the Administrative Law Judge is not persuaded by his disclaimer. He has used fictitious, incomplete and misleading information on several applications, as the record in this case shows, and his denial in this instance is simply not credible.

The Respondent agrued that the Department is estopped from imposing disciplinary action for the false information contained in the 1981 application. In Dworsky's view, disciplinary action, if any, should have been taken in 1981, when memories were fresh. As a general rule, the remoteness of the incidents charged against an employee may result in a denial of due process. See, e.g., Fisher v. Independent School Dist. No. 622, 357 N.W.2d 152 (Minn. App. 1984); Associated Grocers of Colorado, Inc., 82 L.A. 414, 418. Those principles should apply to actions against licensees of the state. However, in this case, the Respondent has failed to establish that the delay which occurred resulted in a denial of due process. The loss of possibly relevant evidence does not constitute a deprivation of due process, Fisher, supra, at 156. No statute of limitations was shown to have been violated, and no undue delay in bringing this charge once the Department became aware of the falsity was shown. For these reasons, and since the Respondent has a complete hearing on the issue, it is concluded that due process considerations do not require that !his charge be dismissed on an estoppel theory.

Count XII

The Dworksy Agency, Inc. is charged with engaging in the insurance business without a license. The evidence supports that allegation. The only issue, then, is whether it was required to be licensed under Minn. Stat. S 60A.17, subd. 1 (1983 Supp.). The statute provides:

> Subdivision 1. License. (a) Requirement. No person shall act or assume to act as an insurance agent in the solicitation or procurement of applications for insurance, nor in the sale of insurance or policies of insurance, nor in any manner aid as an insurance agent in the negotiation of-insurance by or with an insurer, including resident agents or reciprocal or interinsurance exchanges and frateranl beneficiary associations, unitl that person shall

obtain from the commissioner a license therefor. The license shall specifically set forth the name of the person so authorized to act as agent and the class or classes of insurance for which that person is authorized to solicit or countersign policies. An insurance agent may qualify for a license in the following classes: (1) life and health; and (2) property and casualty.

> No insurer shall appoint any natural person, partnership, or corporation to act as an insurance agent on its behalf until that natural person, partnership, or corporation obtains a license as an insurance agent.
>
> (b) Partnerships and corporations. A license issued to a partnership or corporation shall be solely in the name of the entity to which it is issued; provided, that each partner, directors officer, stockholder, or employee of the licensed entity who is personally engaged in the solicitation or negotiation of a policy of insurance on behalf of the licensed entity shall be personally licensed as an insurance agent.
>
> Upon request by the commissioner, each partnership and corporation licensed as an insurance agent shall provide the commissioner with a list of the names of each partner, director, officer, stockholder, and employee who is required to hold a valid insurance agent's license.

The cited statue clearly requires any corporation engaging in business as an insurance agent to become licensed. Although the word 'person' is not defined in the insurance laws, that word may include corporations. Mini. Stat.S 645.44, subd. 7. Since the statute uses the word person' in one place, and the words 'natural person' in another, and since there are other specific references to the licensure of corporations, it is concluded that the Dworsky Agency, Inc. was required to be licensed. This requirement was violated, and in addition to a civil penalty not exceeding $500 authorized under Minn. Stat. S 60A.17, subd. l(d)(1), disciplinary action may be taken.

MOTIONS

The Respondents made several Motions during the course of the hearing. They requested dismissal on the grounds of misconduct by the Department's counsel; improper investigatory procedures by the Department's investigators, including the cocomingling of evidence, the destruction of evidence, and the lack of evidentiary inventories showing the source of evidence and its chain of custody; and violations of the Court of Appeals' Orders regarding the suppression and return of evidence taken from the Respondent's offices on December 13, 1984. Insofar, as those Motions requested that certain evidence not be received, they have been effectively denied by the receipt of that evidence. As to the misconduct alleged, the Administrative Law Judge knows of no mandatory criteria applicable to the commingling, destruction and inventorying of investigative data, or authority requiring dismissal when the source of evidence is not conclusively established. Moreover, the Administrative Law Judge is not empowered to impose sanctions for alleged violations of the Court of Appeals' Order. For these reasons, and because the Respondents did not argue these motions in their brief, as requested, those Motions are denied.

The Respondent's also moved to dismiss a variety of charges at the completion of the Department's case in chief. As to many of the individual charges made, dismissal is appropriate and unless a particular charge is included in the Conclusions of Law, as explained in the Memorandum, it should be dismissed.